IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 33347 of 2006(T)

AGAINST THE ORDER IN IA.NO.1839/2006 IN
AS.64/2006 of PRINCIPAL SUB COURT,ALAPPUZHA

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PETITIONER:

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1. P.X.GEORGE, S/O.P.V.GEORGE,
   ROOM NO.X/259, NEAR MATHA SCHOOL,
   THUMPOLY, RESIDING AT KIZHAKKEPULATHARA VEETTIL,
   ARATTUVAZHI WARD, ALAPPUZHA.

2. LEELAMA GEROGE, W/O.P.A.GEORGE,
   KIZHAKKEPULUTHARA VEETTIL, ARATTUVAZHI WARD,
   ALAPPUZHA.

BY ADV. SRI.N.SUKUMARAN
SRI.LELLULAL T.G.THUNDATHIL

RESPONDENTS:

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1. ST.MARY'S CHURCH, THIRUMALA WARD,
   ALAPPUZHA, REPRESENTED BY BISHOP, DIOCESE OF
   THIRUVALA, ZERO MALABAR.

2. VICAR, ST.MARY'S CHURCH,
   THIRUMALA, ALAPPUZHA.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.33347 OF 2006

Dated 15th December 2006

JUDGMENT

Petitioners are appellants in A.S.64/06 on the file of Principal Sub court, Alappuzha. Appeal was filed with I.A.1839/06 (Ext.P3) to condone the delay of 308 days in filing the appeal. Petitioners also filed I.A.1840/06 (Ext.P4) an application under Rule 5(1) of Order XLI of Code of Civil Procedure to stay execution of the decree till disposal of appeal. This petition is filed under Article 227 of Constitution of India for a direction to Sub court, Alappuzha to dispose of Exts.P3 and P4 applications contending that as per Ext.P1 judgment this court granted time to petitioners only till 18/12/2006 and unless an order is granted, delivery would be taken.

2. Learned counsel appearing for petitioners was heard.

3. Arguments of learned counsel appearing for petitioners is that after Ext.P1 judgment, Ext.P2 appeal was filed where Exts.P3 and P4 applications

were also filed and in view of Ext.P1 order executing court will deliver the property on 18/12/2006 and before condoning the delay as sought for under Ext.P3, it may not be possible for the appellate court to grant an order of stay and therefore direction may be issued to Sub court to dispose of the applications within a time frame and till then property may not be taken delivery of.

4. Petitioners have earlier filed C.R.P.968/06 disputing the right of respondents to take delivery contending that there was an agreement allowing petitioners to continue in possession and therefore they did not file an appeal. Under Ext.P1 order C.R.P was dismissed holding that in view of decree petitioners are not entitled to contend otherwise. Even though petitioners sought an order restraining respondents from taking delivery of properties to enable petitioners to prefer an appeal, this court did not grant that relief and only directed the executing court to postpone the delivery till 18/12/2006. It is thereafter petitioners filed Exts.P2 appeal and P3 and P4 applications. Question whether execution of the decree is to be stayed or

not is to be decided by the appellate court in Ext.P2 appeal. True, without condoning delay sought for in Ext.P3, appellate court cannot grant an order of stay of execution in view of specific provisions in the Code. Learned counsel appearing for petitioners submits that even though respondents appeared in Exts.P3 and P4 applications, learned Sub Judge adjourned the case to 1/1/2007 and therefore executing court may order stay of delivery of the property and direction may be issued to sub court to pass orders in Exts.P3 and P4.

5. Learned Sub Judge, Alappuzha is directed to dispose of Ext.P3 application as expeditiously as possible, on or before 10/7/2007. If the delay is condoned, learned Sub Judge has to pass appropriate order in Ext.P4 in accordance with law. As the case now stands posted to 1/1/2007, executing court is directed to postpone the delivery till 10/1/2007.

Writ petition is disposed of accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.